

CA NO. 505 CV - 91

Plaintiffs,

**MARK BATES and YAHOO!
INC.**

Defendants.

TO THE HONORABLE COURT:

I. Parties

1. Plaintiff Johnny Doe (“Johnny Doe”) is the minor son of John and Jane Doe and resides in Lawrenceville, Georgia.
2. Defendant Mark Bates (“Bates”) of Palestine, Texas is presently incarcerated in the Beaumont Federal Correctional Facility in Beaumont, Texas.
3. Defendant Yahoo! Inc. (“Yahoo”) is a foreign corporation, organized and existing under the laws of the state of Delaware, maintaining its principal place of business in Sunnyvale, California. Yahoo does not maintain a designated agent for service of process in Texas. Accordingly, pursuant to the laws of the State of Texas, Yahoo may be cited to appear by serving the Secretary of the state of Texas which shall

forward the citation and petition to Yahoo's registered agent for service in California at its home office address at 701 First Avenue Sunnyvale, California 94089. See FED. R. CIV. P. 4(b)(1).

II. Jurisdiction

4. The court has jurisdiction over the lawsuit under 28 U.S.C. § 1332 because the plaintiff and the defendants are citizens of different states, and the amount in controversy exceeds \$75,000, excluding interests and costs.

III. Facts

5. Yahoo is a global internet communications, commerce, media, and web content provider/operator, providing online services to millions of worldwide users daily. Yahoo markets itself as the leading provider of comprehensive internet products and services to consumers worldwide. Yahoo's internet services are generally available free of charge to its consumers. Yahoo generates most of its revenue from advertisers. Specifically, Yahoo and other companies with an internet presence track the number of times people visit their websites, commonly referred to as "hits." Yahoo then uses this information to attract advertisers to post advertisements on its website, including banner ads placed directly on the webpages themselves. The more hits or web traffic Yahoo has or can generate, the more advertisers pay to advertise on Yahoo's web pages.

6. As a result, Yahoo is constantly seeking to expand its consumer base to attract more advertisers and larger advertising fees. One of the products Yahoo launched in its continuing efforts to attract advertising dollars was E-groups, a web-based forum for like-minded computer users to interact via a topic-based web page. The topic-specific web pages allow, encourage, and facilitate Yahoo E-group members to engage in

discussions; share photos and files; plan events; exchange ideas and information; and nurture interests and activities.

7. Because, upon information and belief, there were banner ads placed directly on the E-group's web pages themselves, these Yahoo E-group forums, in turn, increased Yahoo's web traffic and substantially contributed to Yahoo's advertising revenue growth. Additionally, the E-groups allow Yahoo to sell advertisers a more narrowly focused target audience.

8. One of Yahoo's E-groups was called Candyman. Candyman was a Yahoo E-group created and moderated by defendant Bates. The purpose of the Candyman E-group was to provide a forum for sharing, posting, emailing, and transmitting hard-core, illegal child pornography.

9. Yahoo E-groups are organized into categories according to interest. The Candyman E-group was organized as an adult, transgender image gallery. The main web page explicitly described its purpose:

This group is for People who love kids. You can post any type of messages you like too [sic] or any type of pics and vids you like too [sic].
P.S. IF WE ALL WORK TOGETHER WE WILL HAVE THE BEST
GROUP ON THE NET.

10. Candyman was a virtual child predator playground, sponsored by and inuring to the benefit of Yahoo. Indeed, soon after its formation, the Candyman Yahoo E-group attracted thousands of members. Its members (i) posted, stored, viewed, and exchanged thousands of illegal hard-core child pornographic photographs and video clips of illegal sex acts with children, (ii) participated in live chat discussions, and (iii) were polled as to their sexual preferences. The Candyman Yahoo E-group encouraged and nurtured pedophilia.

11. For example, on or about December 24, 2000, Bates polled Candyman members, inquiring whether they preferred to see hard-core child pornography or “soft pics,” and also asked what the preferred age of child victims was among the members.

12. Among the images uploaded, stored, and shared via the Yahoo E-group was a photograph of a ten-year old child performing oral sex on an adult male, the same ten-year old straddling an adult male while masturbating him, and even a clip of an adult male removing an infant’s diaper and attempting to vaginally penetrate her.

13. Candyman Yahoo E-group members could also (and many did) register to receive immediate emails of any new postings on the site.

14. Yahoo victimized Johnny Doe, when a neighbor, who was a member of the Candyman Yahoo E-group, took illegal child-pornographic photographs of him and uploaded them onto the Candyman Yahoo E-group site. Together, Yahoo and Bates posted, displayed, and circulated the pornographic photos of Johnny Doe. Yahoo stored the illegal photographs on its servers and made them accessible worldwide through the Candyman Yahoo E-group's website and other spin-off Yahoo E-group websites that catered to pedophiles. Moreover, not only did Yahoo store the illegal photographs on their servers for pedophiles to access via its websites, Yahoo also immediately distributed the child pornography directly to those pedophiles all over the world who had subscribed to Yahoo's service and opted to take advantage of Yahoo's automatic email service.

15. Rather than prevent, remove or block the illegal child pornographic material from being stored on its website or its servers, or remove it once it was stored there, Yahoo instead capitalized on the traffic the Candyman Yahoo E-groups created by advertising on the sites. As a result, Yahoo not only created the portal by which

thousands of pedophiles prospered and hundreds of children, including Johnny Doe, were victimized, but Yahoo also substantially profited from it.

IV. Causes of Action

COUNT I – NEGLIGENCE AGAINST YAHOO

16. The preceding paragraphs of this petition are incorporated by reference as if fully set forth herein.

17. Yahoo had a duty to use reasonable care in the operation and provision of its services.

18. Yahoo breached its duty of reasonable care by allowing Bates and others like him to use Yahoo's services for the uploading, downloading and large-scale distribution of hard-core child pornography through its servers without oversight or intervention because it was profitable to do so.

19. Yahoo's breach caused Johnny Doe and countless other child victims unnamed in this suit to suffer actual damages.

20. Johnny Doe's damages were reasonably foreseeable as a result of Yahoo's breach of reasonable care to Johnny Doe.

21. Yahoo was negligent because it knew that Bates and others like him used Yahoo to upload, market and distribute pornographic materials depicting children.

22. Yahoo knew that Bates was using the Candyman E-group to distribute and trade hard core pornographic pictures and videotapes of children like Johnny Doe in violation of federal and state law, and in violation of its own Terms of Services Agreement.

23. Yahoo took no action to block or remove the pornographic images of Johnny Doe or other child victims, from its servers.

COUNT II-NEGLIGENCE AGAINST BATES

24. The preceding paragraphs of this petition are incorporated as if fully set forth herein.

25. Every person has a duty to exercise reasonable care to avoid a foreseeable injury to others.

26. Bates breached his duty of reasonable care in creating and operating a website that allowed and encouraged pedophiles to engage in the uninhibited distribution and trading of hard core child pornography.

27. Bates' breach of reasonable care caused Johnny Doe to suffer actual damages.

28. Johnny Doe's damages were reasonably foreseeable as a result of Bates' breach in creating the Candyman Yahoo E-group and using same to distribute photographs of Johnny Doe, a minor child.

29. Bates was negligent because he knew or should have known that the creation of the Candyman E-group, where hard core child pornography was distributed and traded, would cause pedophiles to harm innocent children like Johnny Doe.

COUNT III-NEGLIGENCE PER SE AGAINST YAHOO

30. The preceding paragraphs of this petition are incorporated by reference as if fully set forth herein.

31. Yahoo violated federal and state law by knowingly receiving child pornography that has been transported in interstate or foreign commerce by computer, on

its servers; allowing child pornography to be transmitted by means of computer, and/or intentionally or willfully permitting a subscriber to utilize its services to promulgate child pornography with knowledge that the subscriber intended to utilize its services for that purpose.

32. Yahoo's possession of child pornography on its computers and servers and blanket permission to subscribers to use its services unlawfully demonstrate clear violations of federal and state law.

33. Yahoo is guilty of negligence per se because there has been an unexcused violation of federal and state laws.

34. The purpose of applicable federal and state laws is to prevent the receipt and dissemination of child pornography by any means, including by computer. Yahoo violated these statutes by knowingly receiving, distributing and trading child pornography, allowing same to be transmitted by means of a computer, or knowingly permitting its subscribers to use its services for these illegal ends.

35. Johnny Doe falls within the class of persons that the federal and state child pornography statutes were designed to protect because he is a minor whose image is being disseminated in interstate and foreign commerce via computer.

COUNT IV-NEGLIGENCE PER SE AGAINST BATES

36. The preceding paragraphs of this petition are incorporated by reference as if fully set forth herein.

37. Bates violated federal and state law by knowingly receiving and distributing child pornography that has been transported in interstate or foreign

commerce by computer or causing or allowing child pornography to be transmitted by means of a computer.

38. Bates knowingly uploaded, downloaded, distributed, and facilitated the trading of child pornography using the Candyman website.

39. Bates violated federal and state law by knowingly reproducing child pornography in interstate commerce by computer and/or allowing same to be transmitted via computer.

40. Bates' possession of child pornography on his computer and his involvement in the trading and distribution of child pornography violates federal and state law, which is evidenced by his conviction.

41. Bates is guilty of negligence per se because there has been an unexcused violation of federal and state law.

42. The purpose of the applicable federal and state laws is to prevent the receipt and dissemination of child pornography in interstate or foreign commerce by any means, including by computer. Bates violated this statute by knowingly receiving, distributing, and trading child pornography.

43. Johnny Doe falls within the class of persons that the applicable federal and state laws were designed to protect because he is a minor whose image is being disseminated in interstate and foreign commerce via computer.

COUNT V-INTENTIONAL INFLICTION OF EMOTIONAL
DISTRESS AGAINST YAHOO

44. The preceding paragraphs of this petition are incorporated by reference as if fully set forth herein.

45. Yahoo intentionally inflicted severe emotional distress on Johnny Doe.

46. Yahoo engaged in intentional, knowing, and reckless conduct by permitting Bates and similarly minded sexual predators to use its services for purposes of uploading, receiving, trading, viewing, and distributing pornographic images of Johnny Doe, resulting in Johnny Doe's severe emotional distress and mental anguish.

47. Yahoo's resistance to shutting down, policing, investigating, or blocking the Candyman website and similar illegal sites or E-Groups further caused Johnny Doe to suffer severe emotional distress or mental anguish because pornographic images of him have been and will be traded and distributed on the internet forever. Yahoo's resistance also permitted an augmented audience to access and view pictures of plaintiff being sexually victimized.

48. Yahoo had actual and constructive knowledge of the Candyman E-group content (child pornography) and illegal purpose (trading and disseminating child pornography) and sites similar to the Candyman E-group. For example, Yahoo had the child pornography stored on its servers and place advertisements on its E-group web pages.

49. Yahoo knew that Bates created the Candyman E-group to facilitate the distribution and trading of hard core pornographic pictures and videotapes of Johnny Doe and other minor children in violation of Yahoo's Terms of Service agreement and federal and state law.

50. Yahoo intentionally took no action to block or remove the pornographic images of Johnny Doe from its servers. Instead Yahoo decided to collect advertising fees from ads placed on the web pages.

51. Yahoo intentionally permitted its subscribers to utilize its services for uploading, trading, and storage of illegal child pornography by means of its online services, thereby increasing Yahoo's web traffic and advertising revenues.

52. Yahoo's knowledge of the Candyman E-group's content, its reticence to shut down the site, its permission to let the Candyman exist within its own network, and blanket permission for its users to trade and distribute pornographic images of Johnny Doe and other minor children constitutes extreme and outrageous conduct.

53. Yahoo's extreme and outrageous conduct resulted in Johnny Doe experiencing severe emotional distress.

54. As a result of Yahoo's intentional infliction of emotional distress on Johnny Doe, Johnny Doe has suffered damages.

COUNT VI-INTENTIONAL INFLECTION OF EMOTIONAL
DISTRESS AGAINST BATES

55. The preceding paragraphs of this petition are incorporated by reference as if fully set forth herein.

56. Bates intentionally inflicted emotional distress on Johnny Doe.

57. Bates' creation and maintenance of the Candyman Yahoo E-group, where pedophiles could trade and distribute pornographic images of children, constitutes extreme and outrageous conduct. Bates' conduct was extreme and outrageous because he intentionally created the Candyman Yahoo E-groups for the purpose of facilitating the trading and distribution of child pornography and child erotica on the internet.

58. Bates' creation of the Candyman website caused Johnny Doe to suffer severe emotional distress because pornographic images of him have been and will be traded on the internet.

59. As a result of Bates' intentional infliction of emotional distress on Johnny Doe, Johnny Doe has suffered damages.

COUNT VII—NEGLIGENT INFLICTION OF
EMOTIONAL DISTRESS AGAINST YAHOO

60. The preceding paragraphs of this petition are incorporated by reference as if fully set forth herein.

61. Yahoo negligently inflicted emotional distress to Johnny Doe.

62. Yahoo E-groups and online services are notoriously rife with illegal material because Bates and like-minded child pornographers persistently use Yahoo's E-groups and other online services to disseminate child pornography and commit criminal acts.

63. Yahoo negligently allows its services to be used for such illegal means, as such use increases Yahoo's web traffic and attracts more advertising dollars.

64. As a result of Yahoo's cart blanche grant of permission with respect to the illegal use of its services and refusal to investigate the bad acts of its subscribers, i.e., willful ignorance, Yahoo has encouraged, promulgated, and otherwise cultivated child pornography.

65. Yahoo's negligent maintenance of its services contributed to the illegal sex acts committed on Johnny Doe, and the promulgation and dissemination of images recording those acts, which resulted in physical and emotional harm to Johnny Doe.

66. The uploading, dissemination, and storage of images of Johnny Doe being sexually molested have caused Johnny Doe severe emotional distress and mental anguish.

67. The uploading, dissemination, trading, viewing, and storage of images of plaintiff being sexually violated have caused Johnny Doe severe emotional distress and mental anguish.

COUNT VIII- INVASION OF PRIVACY AGAINST YAHOO

68. The preceding paragraphs of this petition are incorporated by reference as if fully set forth herein.

69. Defendants invaded Johnny Doe's privacy by publicly disclosing private facts.

70. Specifically, Yahoo permitted its subscribers to create and maintain the facility for posting and distribution of pornographic images of Johnny Doe being sexually violated, thus disclosing private facts about Johnny Doe publicly.

71. Yahoo failed to shut down the offending website promptly, causing further publication of private facts about Johnny Doe than would have occurred had the site been promptly eliminated.

72. Yahoo provided the forum which hosted the embarrassing and private images of Johnny Doe at the time they were made public.

73. The fact that Johnny Doe is a child sex crime victim and was the subject of pornographic material is a fact that is private, secluded, and secret, as Johnny Doe and his parents wanted to keep the fact that he is a child sex crime victim from the public.

74. The distribution and trading of the images of Johnny Doe is not of legitimate public concern because the pornographic images were obtained by unlawful means and depict child pornography.

75. Yahoo's conduct in facilitating the invasion of privacy and disclosure of private facts is highly offensive to a reasonable person of ordinary sensibilities because Yahoo was involved in facilitating child pornography.

COUNT IX—CIVIL CONSPIRACY AGAINST YAHOO

76. Yahoo sought to boost its web traffic, and thereby its advertising revenues, by making freely available, in addition to its other services, Yahoo E-groups.

77. Yahoo in part achieved its goal via illegal means, in particular, by entering agreements with its subscribers and knowingly permitting Bates and other of its subscribers to use its services for the uploading, distribution, transmission, and storage of child pornography or distributing, transmitting, and storing child pornography itself.

78. Yahoo attracted subscribers like Bates because of its notoriously lax policing and screening policies, and also because Yahoo is known to resist turning over information identifying its subscribers.

79. By virtue of its permissive policy and reticence to police, investigate, block, or shut down sites like Candyman with illegal content and illegal purpose, Yahoo participated in various underlying torts.

80. As a proximate result of Yahoo's participation and cooperation, Johnny Doe suffered damages.

V. Jury Demand

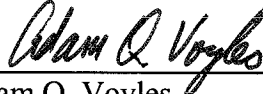
81. Johnny Doe asserts its right under the Seventh Amendment of the United States Constitution and demands a trial by jury on all issues, in accordance with Federal Rule of Civil Procedure 38.

VI. Prayer for Relief

Wherefore, Johnny Doe prays that upon the trial of this action, Johnny Doe recover from Yahoo and Bates, jointly and severally, as follows:

- a. Damages in the amount of at least Ten Million Dollars (\$10,000,000), representing the actual damages incurred by Johnny Doe as results of the conduct and omissions of Yahoo and Bates;
- b. Injunctive relief enjoining Yahoo from permitting the viewing and distribution of Johnny Doe's photographs from its websites or servers;
- c. Recovery of all of attorney's fees, expert witness fees, costs and disbursements of suit;
- d. Pre-judgment and post-judgment interest at the maximum rate provided by law;
- e. Exemplary damages from each of the defendants;
- f. Such other and further relief to which Johnny Doe is deemed entitled by the Court and/or the jury.

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